

JERALD A. WATERS

IBLA 84-594

Decided September 12, 1984

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive acquired oil and gas lease offer NM-A 49070 TX.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Lands Subject to

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from mineral leasing by sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982).

APPEARANCES: Jerald A. Waters, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Jerald A. Waters has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 24, 1984, rejecting his noncompetitive acquired lands oil and gas lease offer NM-A 49070 TX.

On August 28, 1981, appellant filed a noncompetitive acquired lands oil and gas lease offer for 2,311.13 acres of acquired land situated in Howard County, Texas, pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982). In its April 1984 decision, BLM rejected appellant's lease offer because the lands sought are within the city limits of Big Springs, Texas, and, thus, are not subject to leasing under 43 CFR 3100.0-3(b)(2)(ii).

In his statement of reasons for appeal, appellant contends that because of a national energy shortage the Department decided in 1981 to issue oil and gas leases for lands in military bases, including the land involved herein which lies within the former Webb Air Force Base, and to waive the regulatory prohibition on leasing in incorporated cities, towns, and villages. In the alternative, appellant contends that the Board should stay a final decision until he is able to effect a change in the relevant statute.

[1] It is well established that BLM may not issue a noncompetitive oil and gas lease for acquired lands within an incorporated city, town,

or village and must reject any offer filed for such land. Jerry Waters, 79 IBLA 198 (1984); Robert Lyon, 78 IBLA 232 (1984). The prohibition on leasing of such lands is found in section 3 of the Mineral Leasing Act for Acquired Lands, supra, and 43 CFR 3100.0-3(b)(2)(ii). BLM has no authority to waive this statutory prohibition. Jerry Waters, supra. In Waters, we also discussed the amendment to the Mineral Leasing Act for Acquired Lands which opened acquired land which had been set aside for military or naval purposes to mineral leasing and the Departmental implementation of that amendment. We noted that the Department did not and could not waive the separate statutory prohibition on leasing lands which are in incorporated cities, towns, and villages, even though those lands might also be a part of a military reservation.

Appellant also argues that this Board should delay adjudication pending amendment of the statute to allow leasing within incorporated cities, towns, and villages. Appellant's oil and gas lease offer cannot be held pending possible future availability of the land for oil and gas leasing where such leasing was prohibited by statute at the time that the offer was made. 43 CFR 2091.1; James R. Learned, 50 IBLA 416 (1980), aff'd, Learned v. Watt, 528 F. Supp. 980 (D. Wyo. 1981).

Accordingly, we conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge.

